

# United States District Court

WESTERN DISTRICT OF WASHINGTON

BRETT EUGENE THOMAS,

v.

MAGGIE MILLER-STOUT,

JUDGMENT IN A CIVIL CASE

CASE NO. C10-5710RJB

\_\_\_\_ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

  X   **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

THE COURT HAS ORDERED THAT

(1) The court has conducted a *de novo* review of the record. Petitioner contends that the Report and Recommendation did not address his second double jeopardy claim: whether imposing a sentencing enhancement constitutes double jeopardy because the elements of the crimes of which petitioner was convicted already include being armed with a deadly weapon as an element of the crime. Dkt. 1-2, at 15-19; Dkt. 24, at 2. Pursuant to *Missouri v. Hunter*, 459 U.S. 359, 368-69 (1983), this double jeopardy claim is without merit. Petitioner's other double jeopardy claim, whether multiple deadly weapon enhancements for one weapon violate double jeopardy, was addressed by the Magistrate Judge; the court concurs with the analysis and recommendation of the Magistrate Judge on that claim. The court also agrees with the conclusion of the Magistrate Judge that petitioner's due process claim is unexhausted and procedurally barred. Finally, an evidentiary hearing is not warranted. Accordingly, the court **ADOPTS** the Report and Recommendation (Dkt. 21).

(2) The petition for writ of habeas corpus is **DENIED**.

(3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, a Certificate of Appealability is **DENIED** with respect to all claims asserted by petitioner in his habeas petition. Petitioner's Application for a Certificate of Appealability (Dkt. 24-1) was considered in conjunction with his objections. A separate application is not necessary and is accordingly **DENIED** as moot.

\_\_\_\_\_  
March 21, 2011  
Date

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WILLIAM M. McCOOL  
Clerk

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*s/ Mary Trent*  
Deputy Clerk